

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 20, 2010

Lyle W. Cayce
Clerk

No. 08-50296

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SAMMY GEIGER, JR., also known as Sammye Geiger,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:02-CR-95-2

Before HIGGINBOTHAM, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:*

Sammy Geiger, Jr., federal prisoner # prisoner # 60172-080, seeks leave to proceed in forma pauperis (IFP) on appeal from the district court's denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his sentence based on recent amendments to the Sentencing Guidelines for crack cocaine offenses. He pleaded guilty to conspiracy to distribute and possess with intent to distribute crack cocaine, and he was sentenced to 151 months of imprisonment. By moving to proceed IFP, Geiger is challenging the district court's certification decision

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

that his appeal was not taken in good faith because it is frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

The district court's denial of Geiger's § 3582(c)(2) motion was based upon the determination that his base offense level of 38 remained the same under the amended guideline because he had been held responsible for six kilograms of crack cocaine. This drug quantity appeared in the Pre-Sentence Investigation Report prepared for his original sentencing hearing. Geiger maintains that drug quantity was never mentioned at sentencing and that the district court did not state its reasons for the sentence it imposed upon him. A § 3582(c)(2) motion may not be used to challenge a district court's calculation of an original sentence or to contest the appropriateness of the sentence. *United States v. Evans*, 587 F.3d 667, 674 (5th Cir. 2009), *cert. denied*, 130 S. Ct. 3462 (2010).

Geiger has failed to show that he will raise a nonfrivolous issue on appeal. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, his IFP motion is DENIED. Because the appeal is frivolous, it is DISMISSED. *See 5TH CIR. R. 42.2.*